

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ERNEST GUARDADO,  
Plaintiff,

vs.

STATE OF NEVADA *ex rel, et al.*,  
Defendants.

2:17-cv-01072-JAD-VCF

**REPORT AND RECOMMENDATION**

MOTION TO STRIKE [ECF No. 66]

Before the Court is Plaintiff Ernest Guardado's Motion to Strike Defendant Morris Guice's Joinder to Answer. (ECF No. 66). For the reasons discussed below, Plaintiff's motion should be granted.

The Clerk entered default against Guice on March 21, 2019. (ECF No. 44). On April 30, 2019, Guice filed a joinder to another Defendant's answer to the complaint. (ECF No. 62). In a May 1, 2019 Order, the Court "caution[ed] Guice's counsel that Guice may not actively participate in this case because default has been entered against him." (ECF No. 64 at 5). Guice has not moved to set aside default judgment in this case and has not opposed Plaintiff's motion to strike the joinder.

"[I]n defaulting, defendants are deemed to have admitted all well-pleaded factual allegations contained in the complaints." *DIRECTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 851 (9th Cir. 2007). In addition, under LR 7-2(d), "[t]he failure of an opposing party to file points and authorities in response to any motion...constitutes a consent to the granting of the motion." Therefore, Plaintiff's motion to strike should be granted.

Accordingly, and for good cause shown,

1 IT IS HEREBY RECOMMENDED that Plaintiff's Motion to Strike Defendant Morris Guice's  
2 Joinder to Answer (ECF No. 66) be GRANTED and the Joinder (ECF No. 62) be STRICKEN.

3 **NOTICE**

4 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and  
5 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk  
6 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal  
7 may determine that an appeal has been waived due to the failure to file objections within the specified  
8 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections  
9 within the specified time and (2) failure to properly address and brief the objectionable issues waives the  
10 right to appeal the District Court's order and/or appeal factual issues from the order of the District Court.  
11 *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452,  
12 454 (9th Cir. 1983).

13 Pursuant to LR IA 3-1, the Plaintiff must immediately file written notification with the court of  
14 any change of address. The notification must include proof of service upon each opposing party of the  
15 party's attorney. Failure to comply with this Rule may result in dismissal of the action.

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17 IT IS SO RECOMMENDED.

18 DATED this 4th day of June, 2019.

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21 CAM FERENBACH  
22 UNITED STATES MAGISTRATE JUDGE  
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